

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION**

#### **JOINT APPROPRIATIONS SUBCOMMITTEE ON HEALTH AND HUMAN SERVICES**

**Call to Order:** By **CHAIRMAN CHRISTINE KAUFMANN**, on January 6,  
2005 at 8:10 A.M., in Room 102 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Christine Kaufmann, Chairman (D)  
Sen. John Cobb (R)  
Rep. Ray Hawk (R)  
Rep. Joey Jayne (D)  
Sen. Greg Lind (D)  
Rep. Penny Morgan (R)  
Sen. Dan Weinberg (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Pat Gervais, Legislative Branch  
Laura Good, Committee Secretary  
Lois Steinbeck, Legislative Branch

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing: Joint Meeting with House and Senate  
Human Services Committees regarding  
Developmental Disabilities System  
Change.

**CHAIR REP. CHRISTINE KAUFMANN, HD 81, HELENA,** called the meeting to order, welcoming Subcommittee members, members of the House Health and Human Services Committee, and the Senate Public Health, Welfare and Safety. She introduced new Director of the Department of Public Health and Human Services (DPHHS), Dr. Robert Wynia, and panelist Representative Edith Clark.

**Ms. Gervais, Legislative Fiscal Division (LFD),** noted that a number of significant changes are underway in the Developmental Disabilities Services system. She stated that these changes impact all stakeholders in the system: consumers, providers, and the department.

**Ms. Pat Gervais, Legislative Fiscal Division (LFD),** suggested that legislators review policy decisions and changes made by the department, including HB 127 and recent budgetary proposals to move individuals to community services and to reduce the waiting list. She also suggested that legislators consider policy decisions necessitated by the implementation of resource allocation protocol and the budget neutral statewide published rate schedule.

**Ms. Gervais** also provided an agenda and Speaking Notes on the morning's proceedings and introduced **Ms. Jeff Sturm, DPHHS Program Manager,** and **Ms. Doreen Boyer, Disability Division Project Manager.**

[EXHIBIT\(jhh04a01\)](#)

[EXHIBIT\(jhh04a02\)](#)

**Mr. Jeff Sturm, DPHHS Program Manager,** gave a brief history of Montana DPHHS funding and service trends, highlighting the importance of choice, funds portability, and provider quality standards. He stated that under recommendation from the Center for Medicare/Medicaid Services (CMS), DPHHS branched out from RAS (Resource Allocation Sheet) and other programs to examine cost streamlining through rate methodology, which is implemented through either cost reimbursement or standardized public rate. DPHHS chose to create standardized public rates for the state of Montana and solicited the services of the Davis-DeShaies Corporation consulting firm for aid in this project.

**Mr. Sturm** introduced Mr. Norm Davis of Davis-DeShaies and Ms. Doreen Boyer and invited Mr. Davis to begin discussion on Montana Resource Allocation (MONA) and standardized public rate creation and implementation in the State of Montana.

**Mr. Davis** introduced himself as both a provider and a parent of a developmentally disabled child. He provided a brief overview of

his research regarding Montana's DDS, suggesting that the department's most important goal is to create predictable and stable funding strategies while balancing quality, utilization, cost and access. He invited legislators and audience members to follow along with a PowerPoint presentation.

**EXHIBIT(jhh04a03)**

***{Tape: 1; Side: A; Time Counter: Approx. 0 - 15.3}***

**Mr. Davis** described the three main purposes of Montana's rate standardization program as those of safeguarding fairness and equity, redesigning DDS service and funding principles, and creating predictable and stable funding strategies. In order to achieve these goals, he suggested that the Department refine the individual needs assessment process and provider reimbursement rates, and implement person-centered planning and self-directed choice.

**Mr. Davis** provided a summary of State Trends, noting that because of increased service requests and rising care costs, some states are choosing to outsource services, shift costs to local governments and consumers, or implement Self-Directed Service. Reflecting on his Montana research, **Mr. Davis** noted that many Montana providers have managed finances well and created a stable fiscal environment for themselves, their employees and their consumers. He also stated that the average lifetime enrollment of a DDS service consumer is forty-seven years.

Responding to a question from **REP. DON ROBERTS (R), HD 56, BILLINGS**, regarding Montana's ability to accommodate long-term DD consumers, **Mr. Davis** stated that DDS and all state services will likely find it difficult to keep up with care requests as Montana's elderly, obese, diabetic and cardiac-risk populations continue to grow. He cited a recent study stating that by the year 2025, 25% of Montana's population will be over 65 years of age.

Responding to a question from **SEN. GREG LIND (D), SD 50, MISSOULA**, regarding clarification of CMS reimbursement standards, **Mr. Davis** stated that CMS allows the state to set up fair and equitable reimbursement standards, and stipulates that consumer-waivers must have the same buying-power in all parts of the state.

**SEN. JOHN COBB (R), SD 9, AUGUSTA**, noted that Montana and many other states have consumer-driven waivers, and requested information about how states without consumer-driven waivers can comply with regulations.

**Mr. Davis** told the committee that states without consumer-driven waivers cannot comply with regulations, explaining that most services are currently provided through the consumer-driven waiver rather than the nursing home model. He also noted that Montana has avoided penalties by going to CMS early, acknowledging the challenges it faces, creating strategies that fit within CMS guidelines, and going forward.

Following a request from **SEN. COBB** that Mr. Davis use values gleaned from his research to speculate on Montana's future DDS costs, **Mr. Davis** offered to host a separate work session in which to accomplish this.

**SEN. DAN WEINBERG (D), SD 2, WHITEFISH**, noted that providers' financial viability may be secured by underpaying direct care and other staff persons, and asked Mr. Davis if he had in his research examined the effective ratio between the direct providers and staff management.

**Mr. Davis** stated that his research included examination of providers' debt equity ratios, direct care compensation and the relationship between salaries and benefits and the agency's financial stability.

*{Tape: 2; Side: A; Time Counter: Approx. 0.0 - 10.2}*

**Mr. Davis** stated that using history as a predictor of future cost is not reliable. Rather, Montana must devise best practice standards for its services and allocate funds based on the number of staff persons needed for individual services and the salary for said staff persons, rather than a general allocation based on diagnosis or type of need.

**REP. DAVE MCALPIN (D), HD 94, MISSOULA** requested information regarding what kind of stability providers have in service relationships with consumers.

**Mr. Davis** stated that consumers may make PRN (as-needed) or annual/biannual service agreements with providers. Consumers must give providers several months' prior notice before moving or receiving care from another provider, and consumers must remain with a chosen provider for a number of months as determined by the state.

**REP. TERESA HENRY (D), HD 96, MISSOULA**, asked Mr. Davis if consumers may partially opt out of state or provider-dictated programs. She gave the example of a consumer desiring to receive only two weekly physical therapy sessions instead of the

prescribed four, choosing instead to complete the two additional physical therapy routines at home or with family.

**Mr. Davis** stated that this is an excellent example of a situation in which advocacy and quality assurance issues need to be strengthened.

**REP. PENNY MORGAN (R), HD 57, BILLINGS** asked if in his review of Montana-owned facilities, Mr. Davis found evidence of inter-governmental transfers.

**Mr. Davis** stated that he did not look at this specific issue.

**REP. MORGAN** responded that in an audit by the federal government, Montana could have funds confiscated due to lack of information regarding inter-governmental transfers.

**Mr. Davis** replied that he and his team limited their tasks to a specific set of subjects.

**REP. MORGAN** asked Lois Steinbeck, Legislative Fiscal Division, for information regarding federal audits.

**Ms. Lois Steinbeck, LFD**, stated that DDS does not have inter-governmental transfers funding its services. Only mental health and nursing homes have inter-governmental transfer funding. She also noted that nursing home consumers are paid for by Senior Long Term Care, regardless of special problems like DD.

**SEN. LIND** asked if appropriate incentives exist for providers or case managers who conserve funds.

**Mr. Davis** stated that as stewards of public funds, case managers are eligible for, and can receive, such incentives.

**{Tape: 2; Side: B; Time Counter: Approx. 0 - 4.5}**

Following a brief break, **Mr. Davis** provided a computer-aided demonstration of MONA and Individual Cost Plan. Due to technical difficulties, he was unable to access the web-based application that provides Montana-specific values. He offered to lead a work session with this information.

The MONA Individual Cost Plan determines the consumer's amount of yearly state funding and begins with a consumer needs assessment administered by a case manager. Areas assessed include Challenging Behaviors, Current Abilities, Community Inclusion Opportunities, Living Arrangement and Location, Health and Health

Care, and Employment. **Mr. Davis** stressed the importance of both the consumer and his/her family's presence for the assessment.

The amount of approved funding minus costs (rehabilitation, personal services, therapies, etc.) equals difference.

Responding to **REP. HENRY**, who requested information about accessing services in a rural setting, **Mr. Davis** stated that DDS consumers in rural areas should try to create more opportunities with the help of their case managers, consider relocation to an area where services are available, or consider opting out of an unavailable service.

**REP. HENRY** requested information regarding the amount of reasonable financial risk a rural provider might take for individual clients.

**Mr. Davis** stated that MONA-determined rates allow for a limited number of add-ons to be applied as-needed for specific situations.

*{Tape: 2; Side: B; Time Counter: Approx. 10 - 13}*

Prompted by **SEN. COBB**, **Mr. Davis** stated that the funds-minus-cost difference is kept by the state, not in a savings account for the individual who generated it. The difference feeds into a state-maintained risk pool which is drawn on by consumers experiencing crisis or care changes that necessitate further costs.

Replying to **SEN. LIND**, **Mr. Davis** stated that the Sustainable Growth Rate (SGR) is not included in this.

Following a brief break, **CHAIR KAUFMANN** requested that Mr. Davis post the PowerPoint presentation notes online for easier access.

*{Tape: 2; Side: B; Time Counter: Approx. 15.1 - 29}*

**Mr. Davis** provided an overview of Rate Components, including Montana Benchmarks for Direct Care Salaries and Employee-Related Expenses, Counties and Rates with Geographical Factors, and Initial Rates Versus Current SFY 2004 Contracts. He also provided information about the Provider Readiness Review and Shadowing, Piloting and Implementation.

*{Tape: 3; Side: A; Time Counter: Approx. 0 - 1.7}*

**Mr. Davis** concluded his remarks.

**CHAIR KAUFMANN** thanked Mr. Davis for his presentation and opened the floor for questions from legislators.

**QUESTIONS FROM COMMITTEE**

**REP. WILLIAM JONES (R), HD 9, BIGFORK** asked Mr. Davis if employee retention challenges due to low wages were being addressed.

**Mr. Davis** responded that his research compared statewide direct care worker salaries with the salaries of jobs in similar wage brackets, including janitorial, retail, and food service positions. His research also determined that employees remain in direct care staff positions for reasons of promotion opportunity and stable supervision.

Responding to **SEN. COBB, Mr. Davis** stated that as regards direct care salaries, Mr. Davis and his team had used a value corresponding to the salaries received by 25% of direct care workers in order to keep the calculations budget neutral.

Replying to **REP. MARY CAFERRO (D), HD 80, HELENA, Mr. Davis** said that direct care salaries do not include benefits. He also replied that contracted direct care positions usually include benefits.

When asked by **REP. CAFERRO** about a comparison of direct care salaries and state employee compensation, **Mr. Davis** stated that state employee salaries were included in the overall research, but were not compared separately and specifically with direct care salaries because the state compensation's merit system makes this unwise.

***{Tape: 3; Side: A; Time Counter: Approx. 9.8 - 11}***

**CHAIR KAUFMANN** thanked Mr. Davis and announced that public testimony for DDS is scheduled for January 14. She then invited Developmental Disability Division (DSD) representatives to come forward and respond to Mr. Davis' presentation.

**Mr. Sturm** reiterated the importance of portability and choice, as well as health and safety, maintaining a viable provider network that ensures diversity, choice and excellent care, esp. in rural areas. He also discussed Montana's methods of paying providers, provider qualification standards, the stop-loss issue, and the importance of maintaining a viable risk pool from which crisis and other cases can draw.

**Ms. Boyer** clarified the issue of the funds-minus-cost difference, stating that she keeps the amount of difference set aside and

available to the individual who generated it, and is still able to keep budget neutral.

Responding to **REP. JOEY JAYNE (D), HD 15, ARLEE, Mr. Sturm** stated that the Department's contract with Mercer costs \$600,000. 80%-90% of this fee is paid with Medicaid dollars; very little comes from the general fund.

Replying to **REP. JAYNE** regarding the amount of work completed by the Department in order to comply with the new system, **Mr. Sturm** stated that DDS has completed tentative rates, adult MONA, a portion of child MONA, which are ready for implementation and testing. He also stated that it is too early to comment on the success of the pilot program, as it began 5 days ago with 50 consumers.

Prompted by **REP. KAUFMANN**, who commented on the small size of the pilot pool, **Mr. Sturm** agreed that it was very limited but said that it was important to go ahead and begin to test some of the systems.

**REP. DAVE MCALPIN** asked if the \$600,000 Mercer fee included software and indefinite support.

**Mr. Sturm** stated that the tools and web-based system are included in the \$600,000 Mercer fee. He also noted that the update of the billing system was funded through an outside grant.

At the request of **REP. KAUFMANN**, **Mr. Sturm** stated that it was hoped that people with very specialized individual care plans would be covered by MONA and/or the risk pool, so that providers would be able to take wise financial risks in caring for such consumers.

Responding to **SEN. WEINBERG**, **Mr. Sturm** responded that quality of services is also being considered in the pilot program, and confirmed that the assessment system will be available to the legislators for closer study.

**{Tape: 4; Side: A; START}**

Asked by **REP. ROBERTS** about cost of system software updates, **Mr. Sturm** stated that DDS will not enter into a long-term software contract with Mr. Davis' firm; rather, DDS will own the software tools and methods and be able to update them independently.

Prompted by **SEN. LIND** regarding anticipated frequency of rate changes, **Mr. Sturm** stated that the contract with Mr. Davis is a time-limit contract, with Ms. Boyer acting as long-term system



lead within the Department. He also stated that DDS is moving away from a contract system with riders to provider agreements.

**SEN. COBB** requested information regarding the risk of system failure due to budget neutral under-budgeting, and **REP. KAUFMANN** requested clarification of the legislature's role in the system changes. She asked if the committee were simply being informed of changes, or if the committee should advise or direct the Department.

*{Tape: 4; Side: A; Time Counter: Approx. 4.2 - 5.4}*

**Ms. Gervais** stated that the Department is currently proceeding within the bounds of the statutory guidance as laid out by this committee. She also stated that the legislature is not required to interject itself in policy decisions being made by the Department, but that the committee should be aware of such policy decisions in the event that it wishes to interject itself.

**CHAIR KAUFMANN** invited panel members to the table.

**Ms. Gervais** introduced panel members to the committee members and audience. Panel members included:

Rep. Edith Clark

Mr. Jack Chambers, Opportunity Resources, Inc.

Mr. Larry Noonan, AWARE, Inc.

Mr. Kevin Hurlbut, Sketch LLC

Ms. Colleen Nichols, Parent

**Ms. Colleen Nichols**, parent of a 25-year-old son with significant developmental disabilities, and statewide coordinator for PeopleFirst of Montana, a self-advocacy group with over 250 members and 13 chapters across Montana, discussed PeopleFirst goals and activities. She explained that PeopleFirst members are adults with developmental disabilities who are learning the rights and responsibilities associated with being a full citizen, and teaching them to advocate for themselves. Ms. Nichols is also a Mental Health advocate.

**Ms. Nichols** expressed consumers' and families' worries about discrepancies in case managers' MONA assessment styles, as well as lack of information and education regarding MONA cost plans and impacts. **Ms. Nichols** stated that families also fear restructuring of provider rates may force them to ask qualified, experienced and faithful direct care providers to take wage cuts.

**Mr. Jack Chambers, Opportunity Resources**, stated providers' endorsement of choice and portability, especially in state with

many rural consumers. He addressed direct care provider retention as the most important and most fragile aspect of his organization's business, and expressed OP's concern that DDS keep quality paramount, set the pilot to progress at a reasonably thorough speed, and allow providers to compare the RAS to MONA.

**Mr. Chambers** provided two examples of consumers whose funds were cut significantly (by approximately 25% and 40%, respectively) after their MONA assessments.

**Mr. Chambers** also reiterated his organization's support for DDS and its commitment to being an active partner in effective system change.

**Mr. Larry Noonan, AWARE, Inc,** spoke on behalf of a provider whose original Board of Directors was composed of and continues to be led by parents concerned for their children's care. **Mr. Noonan** suggested that DDS and the State actively support providers during system change by addressing and creating solutions for funding and payment challenges during the transition. He also suggested that legislators stop trying to balance DDS budget on the backs of direct care staffers, and questioned the role of the Montana Association for Independent Disability Services (MAIDS).

**Mr. Kevin Hurlbut, SKETCH, LLC,** represented a small provider agency which serves four intensive needs individuals. SKETCH, LLC sees itself as a model of coming healthcare trends, in which small providers offer specific and specialized care. He voiced agreement with Mr. Noonan's and Mr. Chamber's alarm at the discussion of "rich vs. poor" providers, noting again that no small or mid-size provider in Montana is "getting rich".

**Representative Edith Clark** offered encouragement and perspective from her tenure on the Joint Sub-Committee for Health and Human Services, and other leadership positions. She applauded the professionalism of all involved in the DDS changes advised that legislators, providers, consumers and parents remain patient during the long and complicated transition process.

**{Tape: 5; Side: A; START}**

**CHAIR KAUFMANN** opened the floor for questions from the legislators to the panelists.

#### **QUESTIONS FROM THE COMMITTEE**

Responding to **REP. ROBERTS**, regarding whether or not she considers institutionalizing her son, **Ms. Nichols** answered that she looks forward to pooling resources with other families in order to create a local group housing situation. She also said

that she is thankful for the respite home in Helena, which allows her to take breaks from her care duties. When asked what she would change about the program, **Ms. Nichols** replied that she would have the same person complete every MONA assessment, as interpretation can dramatically affect funding.

**SEN. LIND** asked what the State could do to reduce providers' non-payroll costs.

**Mr. Noonan** replied he would like to see a reduction in duplicated information requests from various government agencies. He also noted that contractual mandates detailing staff orientation and governing service provision often impede efficiency.

**Mr. Chambers** requested that the State reduce the amount of paperwork required outside of direct care.

**SEN. LIND** invited panelists to these and other ideas in writing.

**SEN. WEINBERG** asked Ms. Nichols what the committee could do to reduce her anxieties regarding DDS changes. **Ms. Nichols** advised the Department to provide consistent, ongoing training regarding system changes for consumers and their families.

Responding to **SEN. LIND** regarding care acuity discrepancies in rural and urban settings, **Mr. Chambers** said that Montana has good care diversity across the state, thus eliminating many discrepancies.

At the request of **REP. HENRY**, **Mr. Chambers** said that of consumers released from the closed DDS program at Eastmont, some went to Boulder and others were integrated into the community.

Prompted by **REP. ROBERTS**, regarding the added cost of completing excess paperwork, **Mr. Chambers** stated that such work increases his organization's budget by 2%-3%.

**CHAIR KAUFMANN** invited DDS Department to respond to the panelists and legislators' recent questions.

Responding to **Ms. Nichols'** concerns regarding MONA assessment discrepancies, **Mr. Sturm** stated that a MONA certification process will begin this fall.

Replying to panel and legislators' concerns regarding the fast pace of the MONA transition, **Mr. Sturm** said that while CMS needed evidence of progress, he was able to flexible and could consider decreasing the pace of the pilot.

At **SEN. COBB's** inquiry, **Mr. Sturm** stated that the pace was not determined by staffing issues and that he did not need to hire more staff to complete the work. He also stated that while unwilling to make a firm projection, he would like to have MONA fully implemented by next year.

When asked by **REP. KAUFMANN**, if there might be any financial relief for providers during the changeover time, **Mr. Sturm** replied that DDS has promised consumers and families that they will not lose services during the transition.

**CHAIR KAUFMANN** directed legislators to the talking points provided and distributed by Mr. Charlie Briggs of the Montana Association for Independent Disability Services (MAIDS).

**EXHIBIT(jhh04a04)**

**Mr. Briggs, MAIDS**, stated that many of the concerns reflected today will be revisited at the January 14 hearing, at which time MAIDS will make a presentation.

**CHAIR KAUFMANN** invited any audience members unable to attend the January 14 hearing to give testimony today.

**ADJOURNMENT**

Adjournment: 11:50 A.M.

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REP. CHRISTINE KAUFMANN, Chairman

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LAURA GOOD, Secretary

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Additional Exhibits:

**EXHIBIT ([jhh04aad0.TIF](#))**